

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

VIKING ENERGY CORPORATION, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 2:24-cv-00126

CERTAIN UNDERWRITERS AT LLOYD'S LONDON,

Defendant.

**ORDER**

Pending before the court is a Motion for Clarification of Deadline for 12(b) Motions filed by Defendants Certain Underwriters at Lloyd's London, consisting of Lloyd's Syndicate Numbers 4020, 1458 and 1084 ("Defendants. [ECF No. 15]. The Order and Notice issued by this court on May 20, 2024, provides that motions under Federal Rule of Civil Procedure 12(b)(6) be filed no later than June 10, 2024. [ECF No. 13]. After the issuance of this Order and Notice, Plaintiffs, Viking Energy Corporation and Viking Transportation & Disposal Company, LLC, filed a First Amended Complaint. [ECF No. 14]. Defendants now seek to clarify whether the deadline provided in the Order and Notice remains in effect in light of the amended filing.<sup>1</sup> I **FIND** that it does not and hereby **CLARIFY** that the 12(b)-motion deadline

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<sup>1</sup> Plaintiffs filed a Response to Defendants' Motion, stating that "[h]ad counsel for Defendants elected to consult counsel for the Plaintiffs on the issue, counsel . . . would have been pleased to agree that Defendants' response to the First Amended Complaint may be made on or before June 13, 2024, rather than June 10, 2024." [ECF No. 17, at 1]. Therefore, it appears that Plaintiffs have no objections to the alternative deadline provided by the Federal Rules of

is June 13, 2024, as provided under Federal Rule of Civil Procedure 15(a)(3). I further **DENY as moot** Defendants pre-amendment Partial Motion to Dismiss. [ECF No. 11].

Federal Rule of Civil Procedure 15(a) permits a plaintiff to amend its complaint “once as a matter of course” within twenty-one days after the service of a Rule 12(b) motion to dismiss. Fed. R. Civ. P. 15(a)(1)(B). When a party files an amended complaint, the “amended pleading supersedes the original pleading, rendering the original pleading of no effect.” *White v. Turner*, 671 F. App’x 162, 163 (4th Cir. 2016) (unpublished) (quoting *Young v. City of Mount Ranier*, 238 F.3d 567, 573 (4th Cir. 2001)). Where a plaintiff amends a complaint while a motion to dismiss is pending, a court may deny the motion as moot. *See Turner v. Kight*, 192 F. Supp. 2d 391, 397 (D. Md. 2002); *see also Sennott v. Adams*, No. 6:13-cv-02813-GRA, 2014 WL 2434745, at \*3 (D.S.C. May 29, 2014) (“[A] defendant’s previous motion to dismiss is rendered moot when a plaintiff files an amended complaint.”); *Skibbe v. Accredited Home Lenders, Inc.*, No. 2:08-cv-01393, 2014 WL 2117088, at \*3 (S.D. W. Va. May 21, 2014) (denying as moot defendants’ renewed motion to dismiss where “[t]he Third Amended Complaint superseded the Amended Complaint and the Second Amended Complaint”).

Here, Plaintiffs filed their First Amended Complaint, [ECF No. 14], on May 30, 2024, just fourteen days after Defendants filed their initial Rule 12(b)(6) motion, [ECF No. 11]. Because the Federal Rules of Civil Procedure permit a plaintiff to file an amended complaint with twenty-one days of the service of a 12(b) motion, the First

Amended Complaint was timely filed. Fed. R. Civ. P. 15(a). Plaintiffs' First Amended Complaint, therefore, supersedes their original Complaint and renders Defendants' May 16, 2024, Partial Motion to Dismiss, [ECF No. 11], moot.

Additionally, the Federal Rules of Civil Procedure provide that "any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later," unless the court orders otherwise. Fed. R. Civ. P. 15(a)(3). Here, the deadline to file Rule 12(b)(6) motions under the Order and Notice is June 10, 2024, [ECF No. 13]; however, that Order and Notice was issued prior to the filing of Plaintiffs' First Amended Complaint. As such, Rule 15(a)(3) controls, and Defendants have until June 13, 2024—fourteen days from the date of service of that amended pleading—to respond. Fed. R. Civ. P. 15(a)(3).

Accordingly, Defendants' Partial Motion to Dismiss, [ECF No. 11], is **DENIED as moot**. Defendants' Motion for Clarification of Deadline for 12(b) Motions, [ECF No. 15], is **GRANTED**, and the court hereby **CLARIFIES** that the 12(b)-motion deadline is June 13, 2024, as provided under Federal Rule of Civil Procedure 15(a)(3), rather than the June 10, 2024, deadline provided in the Order and Notice issued by the court on May 20, 2024. The court further **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented parties.

ENTER: June 10, 2024



JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE